

2. 37 CFR 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

§253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

(c) \* \* \*

(1) For all such compositions in the repertory of ASCAP annually: \$205.

(2) For all such compositions in the repertory of BMI annually: \$205.

(3) For all such compositions in the repertory of SESAC annually: \$48.

Marybeth Peters,

Register of Copyrights.

Dated: November 17, 1994.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-29250 Filed 11-28-94; 8:45 am]

BILLING CODE 1410-33-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

RIN 2900-AG86

### Chronic Fatigue Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Interim rule with request for comments.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by adding a diagnostic code and evaluation criteria for chronic fatigue syndrome. The intended effect of this amendment is to ensure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

**DATES:** Comments must be received on or before January 30, 1995. This amendment is effective November 29, 1994.

**ADDRESSES:** Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420 or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW, Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900-AG86." All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW, Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

### FOR FURTHER INFORMATION CONTACT:

Carol McBride, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** Chronic fatigue syndrome (CFS), while similar to syndromes described in the last century, such as neurasthenia, is a syndrome in which there has been renewed interest in recent years. This document establishes a diagnostic code and criteria for its evaluation. While this condition is of unknown etiology, we have included it with systemic diseases, now designated § 4.88b, because it often involves many body systems, and may be of infectious or immune origin, similar to other diseases in this section.

CFS is a condition characterized by non-specific symptoms. Because it has been ill-defined and sometimes confused with other conditions, we have provided required diagnostic criteria for VA purposes in § 4.88a. These criteria are based on diagnostic criteria for CFS provided in a pamphlet entitled "Chronic Fatigue Syndrome—A Pamphlet for Physicians" published in May, 1992 by the U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health (NIH Publication No. 92-484).

The diagnosis of CFS, according to the NIH pamphlet, requires the presence of two major criteria: (1) The new onset of persistent or relapsing debilitating fatigue or easy fatigability in a person who has no previous history of similar symptoms, that does not resolve with bedrest, and that is severe enough to reduce or impair average daily activity below 50% of the patient's premorbid activity level for a period of at least six months, and (2) other clinical conditions that may produce similar symptoms must be excluded by thorough evaluation, based on history, physical examination, and appropriate laboratory findings. In addition to these major criteria, there must be either at least six of eleven specified symptoms plus at least two of three physical criteria, or at least eight of the specified eleven symptoms. These criteria are set forth in the final rule in a simplified form that is not intended to be materially different from that contained in the NIH pamphlet.

We have established three criteria for diagnosis: (1) The new onset of debilitating fatigue that is severe enough to reduce daily activity below 50 percent of the usual level for at least six months, (2) the exclusion by history, examination and laboratory tests of

other clinical conditions that may produce similar symptoms, and (3) the presence of six or more of the following: acute onset of the condition, low grade fever, nonexudative pharyngitis, palpable or tender cervical or axillary lymph nodes, generalized muscle aches or weakness, fatigue lasting 24 hours or longer after exercise, headaches (of a type, severity, or pattern that is different from headaches in the pre-morbid state), migratory joint pains, neuropsychologic symptoms, sleep disturbance.

Following the initial six-month period of illness required to establish the diagnosis, some people function well at home and work, while others are partially or totally disabled by the debilitating fatigue and other symptoms, which often wax and wane. We will evaluate the condition based either on symptoms of the syndrome as they affect routine daily activities or on the periods of incapacitation which result. While a reduction in daily activities of 50 percent for six months is required to establish the diagnosis, thereafter CFS may be manifested at other levels of severity. We have thus provided evaluation levels of 10, 20, 40, 60 and 100 percent; the 10% evaluation will be assigned for the condition when symptoms are controlled by continuous medication. We have also included a note defining incapacitation, a term used in the criteria, as a requirement for bed rest and treatment by a physician.

According to the Centers for Disease Control (CDC), approximately 50 percent of individuals suspected of having CFS show signs of psychiatric illness before the onset of CFS symptoms ("Chronic Fatigue Syndrome", Disease Directory Document #362100, CDC FAX Information Service, November 18, 1993). It is also possible that there may be a secondary mental disorder in some cases that encompasses some or all of the neuropsychologic symptoms used to establish the diagnosis of CFS. This would not, however, negate the diagnosis of CFS.

It is necessary to make this rule effective upon publication. Unlisted conditions are rated under the schedules for closely related conditions. However, because of the variety of analogous conditions to be considered with chronic fatigue syndrome, it is necessary to establish a final rule immediately in order to avoid inconsistency in evaluations. Comments have been solicited for 60 days after publication of this document. VA may modify the rule in response to comments, if appropriate.

Because no notice of proposed rulemaking was required in connection



with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, this amendment would not directly affect any small entities since it would affect only individuals.

This rule has been reviewed as a "significant regulatory action" under E.O. 12866 by the Office of Management and Budget.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

#### List of Subjects in 38 CFR Part 4

Individuals with disability, Pensions, Veterans.

Approved: August 1, 1994.

Jesse Brown,

Secretary of Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

#### PART 4—SCHEDULE FOR RATING DISABILITIES

##### Subpart B—Disability Ratings

1. The authority citation for part 4 is revised to read as follows:

Authority: 38 U.S.C. 1155.

##### § 4.88a [Redesignated as § 4.88b]

##### § 4.88b [Redesignated as § 4.88c]

2. Sections 4.88a and 4.88b are redesignated 4.88b and 4.88c respectively.

3. Section 4.88a is added to read as follows:

##### § 4.88a Chronic fatigue syndrome.

(a) For VA purposes, the diagnosis of chronic fatigue syndrome requires:

(1) new onset of debilitating fatigue severe enough to reduce daily activity to less than 50 percent of the usual level for at least six months; and

(2) the exclusion, by history, physical examination, and laboratory tests, of all other clinical conditions that may produce similar symptoms; and

(3) six or more of the following:

- (i) acute onset of the condition,
- (ii) low grade fever,
- (iii) nonexudative pharyngitis,
- (iv) palpable or tender cervical or axillary lymph nodes,

(v) generalized muscle aches or weakness,

(vi) fatigue lasting 24 hours or longer after exercise,

(vii) headaches (of a type, severity, or pattern that is different from headaches in the pre-morbid state),

(viii) migratory joint pains,

(ix) neuropsychologic symptoms,

(x) sleep disturbance.

(b) [Reserved]

4. Newly redesignated section 4.88b is amended by adding diagnostic code 6354 following diagnostic code 6351, to read as follows:

##### § 4.88b Schedule of ratings—systemic diseases.

##### 6354 Chronic Fatigue Syndrome (CFS):

Debilitating fatigue, cognitive impairments (such as inability to concentrate, forgetfulness, confusion), or a combination of other signs and symptoms:

Which are nearly constant and so severe as to restrict routine daily activities almost completely and which may occasionally preclude self-care ..... 100

Which are nearly constant and restrict routine daily activities to less than 50 percent of the pre-illness level; or which wax and wane, resulting in periods of incapacitation of at least six weeks total duration per year ..... 60

Which are nearly constant and restrict routine daily activities to 50 to 75 percent of the pre-illness level; or which wax and wane, resulting in periods of incapacitation of at least four but less than six weeks total duration per year ..... 40

Which are nearly constant and restrict routine daily activities by less than 25 percent of the pre-illness level; or which wax and wane, resulting in periods of incapacitation of at least two but less than four weeks total duration per year ..... 20

Which wax and wane but result in periods of incapacitation of at least one but less than two weeks total duration per year; or symptoms controlled by continuous medication ..... 10

Note: For the purpose of evaluating this disability, the condition will be considered incapacitating only while it requires bed rest and treatment by a physician.

[FR Doc. 94-29274 Filed 11-28-94; 8:45 am]

BILLING CODE 8320-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[WY6-1-6245a; AD-FRL-5104-1]

##### Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is fully approving revisions to the State Implementation Plan (SIP) submitted by the State of Wyoming for the purpose of meeting requirements of the Clean Air Act (Act), as amended in 1990, with regard to New Source Review (NSR) in areas that have not attained the National ambient air quality standards (NAAQS). The revision to the implementation plan was submitted by the State on November 12, 1993 to satisfy certain Federal requirements for an approvable non-attainment NSR SIP for Wyoming. Also in this document, EPA is approving other minor revisions to the State's NSR rules which were included in the State's November 12, 1993 submittal.

**DATES:** This direct final rule is effective January 30, 1995 unless notice is received by December 29, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments should be addressed to Vicki Stamper, 8ART-AP, at the EPA Regional Office listed.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2466; and Air Quality Division, Department of Environmental Quality, Herschler Building, 4th floor, 122 West 25th Street, Cheyenne, Wyoming, 82002.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado, 80202-2466, (303) 293-1765.

##### SUPPLEMENTARY INFORMATION:

##### I. Background

The air quality planning requirements for non-attainment new source review are set out in part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary



views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing non-attainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this proposal and the supporting rationale.

EPA is currently developing a proposed rule to implement the changes under the 1990 Amendments in the new source review provisions in parts C and D of title I of the Act. The Agency anticipates that the proposed rule will be published for public comment in late 1994. If EPA has not taken final action on States' NSR submittals by that time, EPA will refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1994/1995. Upon promulgation of those regulations, EPA will review those NSR SIP submittals on which it has taken final action to determine whether additional SIP revisions are necessary.

The State of Wyoming only has one non-attainment area. It is the City of Sheridan, which is designated as a moderate PM<sub>10</sub> non-attainment area. The non-attainment NSR provisions applicable to moderate PM<sub>10</sub> non-attainment areas are found in sections 173 and 189(e) of the Act. In general, section 173 allows permits to be issued for the construction or modification of major stationary sources proposing to locate in non-attainment areas only if the following conditions are met: (1) The new or modified major stationary source has obtained emission offsets from the same or other sources in the region which provide for reasonable further progress towards attainment of the NAAQS; (2) the new or modified major stationary source must comply with the lowest achievable emission rate; (3) the owner of the proposed new or modified major stationary source has demonstrated that all other sources in the State owned, operated, or controlled by the owner of the proposed source are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act; (4) the EPA Administrator has not determined that the applicable SIP is not being adequately implemented for the non-attainment area in which the proposed source is to be constructed or modified;

and (5) an alternative siting analysis has been prepared which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of the proposed source's location, construction, or modification.

Section 302(j) of the Act sets the threshold for defining a major stationary source at 100 tons per year, and States' non-attainment NSR rules must reflect this major stationary source threshold, unless a more stringent threshold is required in subparts 2-4 of part D of the Act (which includes specific provisions for ozone, carbon monoxide, and PM<sub>10</sub> non-attainment areas). For moderate PM<sub>10</sub> non-attainment areas, there is not a more stringent major stationary source threshold and, thus, State non-attainment NSR rules must comply with the 100 tons per year threshold of the section 302(j) definition.

The only additional requirements of subpart 4 of part D of the Act required for moderate PM<sub>10</sub> non-attainment areas are those of section 189(e) of the Act. Section 189(e) provides that the control requirements applicable to new and modified major stationary sources of PM<sub>10</sub> also apply to new and modified major stationary sources of PM<sub>10</sub> precursors, unless the Administrator finds that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standards in the area. On June 23, 1994, EPA announced its final determination that sources of PM<sub>10</sub> precursors do not contribute significantly to PM<sub>10</sub> exceedances in the Sheridan PM<sub>10</sub> non-attainment area (59 FR 32361). Consequently, the requirements of section 189(e) do not apply to the Sheridan PM<sub>10</sub> non-attainment area.

States with moderate PM<sub>10</sub> non-attainment areas were required to submit NSR rules meeting the general requirements discussed above and any additional requirements of subpart 4 of part D by June 30, 1992.

In the August 28, 1989 State submittal of the moderate PM<sub>10</sub> non-attainment area SIP for Sheridan, it was stated that section 21 of the State's regulations prohibited the construction or modification of major stationary sources in non-attainment areas by prohibiting the construction or modification of sources which would have a significant ambient impact on air quality in the non-attainment area. However, after further review of the State's regulation, EPA determined that the State's regulation did not provide adequate assurance that no new or modified major stationary source would be able to construct in a non-attainment area. In a March 19, 1993 letter, EPA notified the

State of this determination and provided the State with two options for meeting the Federal NSR permitting requirements. Either the State could impose a construction ban by adopting the Federal definitions of "major stationary source" and "major modification" in 40 CFR

51.165(a)(1)(iv) and (a)(1)(v) and prohibiting the construction of sources meeting those definitions in the Sheridan PM<sub>10</sub> non-attainment area, OR the State could adopt a NSR permitting program meeting the requirements of 40 CFR 51.165 as well as the new requirements in section 173 of the Act. The State chose the first option.

On September 16, 1993, the State of Wyoming adopted revisions to section 21 of its regulations which prohibit the construction or modification of major stationary sources of PM<sub>10</sub> in the Sheridan PM<sub>10</sub> non-attainment area. The State also adopted other minor revisions to its NSR permitting regulations in section 21. The Governor subsequently submitted these revisions for approval in the SIP on November 12, 1993.

In this rulemaking action on the Wyoming non-attainment NSR SIP submittal, EPA is applying its interpretations taking into consideration the specific factual issues presented.

## II. State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566).

### A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA



within 6 months after receipt of the submission.

The State of Wyoming held a public hearing on July 22, 1993, to entertain public comment on the new source review implementation plan. Following the public hearing, the plan was adopted by the Environmental Quality Council on September 16, 1993, became effective on October 26, 1993, and was submitted to EPA on November 12, 1993 as a revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated January 7, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In this action, EPA approves the State of Wyoming's non-attainment new source review SIP submittal.

#### B. Evaluation of State Submittal

On November 12, 1993, the Governor of Wyoming submitted for EPA approval revisions to the SIP for Air Quality consisting of revisions to section 21 of the Wyoming Air Quality Standards and Regulations (WAQSR), *Permit requirements for construction, modification and operation*. The revisions were designed to accomplish the following purposes: (a) Revise the existing permit requirements for operating permits to properly interface with the new section 30, Operating Permits regulation; (b) provide for collection of fees to cover the cost of reviewing and issuing permits under section 21; and (c) provide for a prohibition of construction or modification of major sources of PM<sub>10</sub> in the City of Sheridan PM<sub>10</sub> non-attainment area until such time as the area is designated attainment for PM<sub>10</sub>. These are discussed more fully in the following paragraphs:

(a) Section 21(c)(ii)(B) prohibits the construction or modification of major stationary sources of PM<sub>10</sub> within the City of Sheridan PM<sub>10</sub> non-attainment area until such time as the area is redesignated to attainment. This was submitted to satisfy the NSR requirements for the State's PM<sub>10</sub> non attainment area, which were required to be submitted by June 30, 1992.

(b) In order to make the regulations consistent with the section 30 Operating Permit regulations and to integrate section 30 into existing air quality programs, the State revised sections 21(a)(ii), (iii), and (v), and 21(o). These sections clarify the difference between section 21 permit requirements, and the

title V permit requirements in section 30, and imposes fees for section 21 permitting actions. EPA has reviewed the provisions in section 21(c)(ii)(B) and believes that the State regulation will effectively prohibit the construction or modification of major stationary sources of PM<sub>10</sub> in the Sheridan PM<sub>10</sub> nonattainment area. Because the State has elected to adopt a construction ban rather than adopting nonattainment NSR permitting regulations for new or modified major sources in the Sheridan PM<sub>10</sub> nonattainment, EPA believes the State has adequately met the nonattainment NSR requirements of part D of the Act by adopting more stringent provisions. In addition, EPA has reviewed the other revisions to section 21 and believes they provide for consistency with the corresponding Federal regulations in 40 CFR part 51 and clarity within the State's regulations. EPA is therefore approving the revisions to Wyoming's NSR regulations.

#### III. Implications of This Action

The EPA is approving the revisions to the Wyoming SIP submitted by the State of Wyoming on November 12, 1993, which include revisions to section 21 of the WAQSR pertaining to construction permit requirements. The State of Wyoming has submitted a complete plan which meets the NSR requirements of part D of the Act. EPA is also approving other minor revisions to section 21, which were included in the November 12, 1993 submittal.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective January 30, 1995 unless, by December 29, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are

received, the public is advised that this action will be effective January 30, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The OMB has exempted these actions from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis addressing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its action concerning SIP's on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by



reference, Intergovernment relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 26, 1994.

Jack W. McGraw,  
Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart ZZ—Wyoming

2. Section 52.2620 is amended by adding paragraph (c)(25) to read as follows:

##### § 52.2620 Identification of plan.

(c) \* \* \*

(25) On November 12, 1993, the Governor of Wyoming submitted revisions to the Wyoming State Implementation Plan (SIP). Specifically, the State submitted revisions to the Wyoming Air Quality Standards and Regulations (WAQSR), section 21 "Permit requirements for construction, modification and operation." Among other things, these revisions were made to address the non-attainment New Source Review (NSR) provisions of part D of the Act for PM<sub>10</sub> nonattainment areas, which were due to EPA on June 30, 1992.

(i) Incorporation by reference.  
(A) The following subsections of section 21 of the Wyoming Air Quality Standards and Regulations "Permit requirements for construction, modification and operation," adopted on September 16, 1993 and effective October 26, 1993: subsections (a)(ii), (a)(iii), (a)(v), (c)(ii)(B), (k)(vii) and (o).  
(ii) Additional material.

(A) Letter from Mary A. Throne, Assistant Attorney General, to the Governor of Wyoming, dated October 1, 1993, documenting the necessary legal authority under state law to adopt and implement the revised regulation.

[FR Doc. 94-29207 Filed 11-28-94; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Part 52

[TX-32-1-6057a; FRL-5093-5]

#### Clean Air Act Approval and Promulgation of Lead Implementation Plan for a Portion of Collin County, Texas

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA today is approving the State Implementation Plan (SIP) submitted by the State of Texas for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for lead. The SIP was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for Collin County, Texas.

**DATES:** This final rule is effective on January 30, 1995, unless notice is received by December 29, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register* (FR).

**ADDRESSES:** Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6T-AP), US EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, TX 75202-2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, TX 78711-3087.

Anyone wishing to review this petition at the US EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mick Cote, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7219.

#### SUPPLEMENTARY INFORMATION:

##### Background

The air quality planning requirements for lead nonattainment areas are set out in subparts 1 and 5 of part D of title I of the Act.<sup>1</sup> The EPA has issued a "General Preamble" describing the

<sup>1</sup> Subpart 1 contains provisions applicable to nonattainment areas generally, subpart 5 applies to Sulfur Dioxide, Nitrogen Oxides, and lead. The EPA has attempted to clarify the relationship among these provisions in the general preamble as appropriate in today's notice and supporting documents.

EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing lead nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's approval and the supporting rationale (57 FR 13549, April 16, 1992).

Those States with lead nonattainment areas (designated nonattainment pursuant to section 107(d)(5)) were required to submit, among other things, the following provisions by July 6, 1993:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) will be implemented;

2. A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than January 6, 1997; and

3. A demonstration that reasonable further progress (RFP) will be made toward attainment by January 6, 1997;

States with lead nonattainment areas are also required to submit all other provisions required by part D of title I of the Clean Air Act including a permit program for the construction and operation of new and modified major stationary sources; and contingency measures which become effective without further action by the State or EPA, upon a determination by the EPA that the area has failed to achieve RFP or to attain the lead NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13498-13569 (April 16, 1992).

The Gould National Battery, Incorporated (GNB) smelter produces lead from spent lead-acid batteries and other lead bearing scrap. The GNB plant is located just southwest of Frisco, Texas, and is surrounded by rural/agricultural land. Dallas, Fort Worth, and Denton, Texas, are all located within 50 kilometers of the GNB facility. The facility currently produces 4.27 tons per year of lead emissions.

Since 1981, lead emissions have been monitored continuously in Collin County. Violations of the lead National Ambient Air Quality Standard (NAAQS) were recorded in 1985, 1989, and 1990. Notices of violation were issued by the State to the GNB facility with